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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,703	02/04/2004	Michael K. Noggle	NOGGL.001A	3790
20995	7590	01/23/2006	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			WONG, STEVEN B	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 01/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/771,703	NOGGLE, MICHAEL K.
	Examiner Steven Wong	Art Unit 3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 10 November 2005.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,3 and 5-14 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,8 and 11 is/are rejected.

7) Claim(s) 3,5-7,9,10 and 12-14 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

<p>1)<input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.</p>	<p>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.</p> <p>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6)<input type="checkbox"/> Other: _____.</p>
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Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification fails to provide antecedent support for the structure of the tee as presented in the amended claims. For example, the specification does not clearly define the first portion and end portion of the tee. The remarks refer to page 3, lines 19-24 of the specification, however, this citation does not set forth the first portion and end portions recited in the amended claims.

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Lemon (4,783,077). Lemon discloses a golf tee (note Figure 4) comprising a head and a tip and a plurality of ribs (72, 74, 76) extending along the shaft of the tee between the head and the tip. A portion of the length of the ribs is of a constant thickness. The ribs inherently define a first stop that would provide increased penetration resistance when it engages the ground. The user would inherently be able to insert the tee to a desired second depth. The tee of Lemon inherently defines an end portion (in Figure 4, the portion of the tee shaft without ribs thereon) that is adapted to penetrate the ground.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lemon (4,783,077). Note the rejection of claims 1 and 11 above. It would have been obvious to one of ordinary skill in the art to insert the tee of Lemon to a depth such that the ribs (72, 74, 76) engage the ground in order to tee a golf ball at a lower tee height.

Response to Arguments

5. Applicant's arguments filed November 10, 2005 have been fully considered but they are not persuasive. Regarding the rejection under 35 U.S.C. 102(b), the applicant contends that Lemon does not disclose the first plurality of ribs adjacent to and spaced upwardly from the end portion and of a first constant cross-sectional area larger than the cross-sectional area of the end portion. Further, the applicant argues that Lemon does not disclose that the ribs are to contact the ground and thus do not provide a stop. However, these arguments are not persuasive as the ribs (72, 74, 76) of Lemon are inherently capable of engaging the ground. The recitation that the ribs engage the ground relates to the intended use of the device which the tee of Lemon is inherently capable of performing.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Also, the portion of the tee of Lemon that includes the ribs thereon defines a first portion of the tee that is adjacent to and spaced upwardly from the end portion (the end portion being the portion of the tee shaft that does not have any ribs thereon). Further, Figure 4 of Lemon clearly shows the first portion as having a greater cross-sectional area than that of the end portion.

Regarding claims 3-6 and 9, the rejection under 35 U.S.C. 103(a) has been withdrawn.

Regarding the rejection of claim 8, the rejection under 35 U.S.C. 103(a) over Lemon in view of Cardarelli has been withdrawn. Claim 8 is now rejected under 35 U.S.C. 102(b) as being anticipated by Lemon. The applicant argues that the combination of Lemon in view of Cardarelli lacks the teaching for a first portion including a first plurality of ribs of a first constant cross-sectional area larger than the cross-sectional area of the end portion. However, Lemon provides a first portion having a plurality of ribs thereon that is of greater cross-sectional area than the cross-sectional area of the end portion (the portion of the shaft of the tee that does not include the ribs).

Regarding applicant's argument that there is no suggestion to combine the teachings of Lemon and Cardarelli, this argument is moot as the combination of Lemon in view of Cardarelli has been withdrawn.

Regarding claim 7, the rejection has been withdrawn and claim 7 has been indicated as containing allowable subject matter.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Wong whose telephone number is 571-272-4416. The examiner can normally be reached on Monday through Wednesday 7am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Steven Wong
Primary Examiner
Art Unit 3711

SBW
January 11, 2006